

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

D. R. HORTON, INC.

and

MICHAEL CUDA, an individual

---

NLRB Case No. 12-CA-25764

**MOTION OF CHARGING PARTY MICHAEL CUDA FOR PERMISSION TO FILE  
LATE EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION**

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**MOTION FOR PERMISSION TO FILE LATE EXCEPTIONS  
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Pursuant to National Labor Relations Board Rules and Regulations §102.111(c), Charging Party Michael Cuda moves the Board for permission to file these late Exceptions to the Administrative Law Judge's Decision ("ALJD") in *D.R. Horton, Inc.*, No. 12-CA-25764. For the reasons stated in this memorandum and in the attached Declaration of Michael Cuda, good cause exists to permit the late filing of these Exceptions.

In the General Counsel's Complaint and in all proceedings before the Administrative Law Judge in this matter, the General Counsel took the position, consistent with Charging Party's position throughout these proceedings, that respondent D.R. Horton's workplace policy prohibiting workers from filing joint, class action, and collective action workplace claims violates Sections 7 and 8(a)(1) of the National Labor Relations Act. Declaration of Michael Cuda ¶2. The General Counsel appropriately requested relief for these violations in the form of a cease and desist order instructing D.R. Horton to no longer maintain its policy of prohibiting joint, class, and collective arbitrations; rescission of the prohibition on joint, class, and collective actions in the mandatory arbitration agreement; and notification to current and former employees that the prohibition has been rescinded. *Id.* ¶3.

The Charging Party reasonably understood that the General Counsel would maintain this position before the NLRB, and the General Counsel did maintain this position in its Exceptions to the ALJD filed on March 14, 2011. *Id.* at ¶4. The Charging Party was not aware until he recently shared with his counsel the General Counsel's Reply Brief in Response to Answer to Exceptions (which was served on the Charging Party on or about April 25, 2011, but not on his

counsel) that the General Counsel had changed his position and had limited the scope of relief requested. *Id.* at ¶¶4-7.

If the Charging Party, who only recently became aware of the General Counsel's change in position and its significance, is not permitted to present his Exceptions in support of the General Counsel's original request for relief, he will be prejudiced in his ability to receive complete relief from respondent's unlawful actions. No undue prejudice to respondent D.R. Horton will result from permitting the Charging Party to submit its untimely Exceptions in support of the General Counsel's original position on relief in this case. The General Counsel's original position was fully litigated below and was presented in the General Counsel's Exceptions to the ALJD. The basis for the Charging Party's Exceptions are also fully set forth in the amicus brief filed by SEIU et al. in this matter, which is pending before the Board and to which the Board has given all parties until June 17, 2011 to respond.

### **Conclusion**

For the foregoing reason, this motion for permission to file the Charging Party's untimely Exceptions to the Administrative Law Judge Decision should be granted.

Dated: May 25, 2011

Respectfully submitted,

MORGAN & MORGAN

By: /s/ Carlos Leach  
Carlos Leach  
Counsel for Charging Party

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 25, 2011, the foregoing document

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was served by electronic mail as follows:

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